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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 25, 1996

Norman H. Nosenchuck, P.E., Director
Division of Solid & Hazardous Materials
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233-7250

Dear Mr. Nosenchuck:

Thank you for your letter requesting additional information on the scope and applicability of the Area of Contamination (AOC) concept. Independent of your request, EPA recently completed guidance on application of the AOC concept during cleanups regulated under the Resource Conservation and Recovery Act (RARA) and other cleanups. This guidance is attached.

As you requested, we have reviewed the June 11, 1992 letter from Sylvia K. Lowrance to Douglas H. Green regarding application of the AOC concept to routine earthmoving and grading activities. The discussion in the June 11, 1992 letter continues to reflect Agency policy on areas of contamination.

The area of contamination concept was discussed in detail in the preamble to the National Contingency Plan (55 FR 8758-8760, March 8, 1990). Through the AOC concept, EPA recognizes that certain discrete areas of generally dispersed contamination may be equated to RARA landfills. Just as movement of hazardous wastes within a landfill would not typically constitute a new act of treatment, storage or disposal for purposes of RCRA, movement of media contaminated by hazardous wastes within an area of contamination does not typically trigger RCRA requirements. While the area of contamination concept was first explained in the CERCLA NCP, it is based on an interpretation of RCRA. It applies equally to RCRA corrective action sites and other actions.

In most cases the AOC concept is applied in the context of a

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government overseen cleanup action, and delineation of AOCs are reviewed, overseen and approved as part of those actions. However, since the AOC concept is an interpretation of current Federal statutory and regulatory requirements, its application outside overseen cleanup actions does not require oversight or advance approval at the Federal level. When the AOC concept is applied outside the context of an overseen cleanup action, EPA encourages consultation with the appropriate agency and routinely cautions individuals that mis-application of the AOC concept could, potentially, result in substantial fines and penalties associated with improper disposal of hazardous waste. EPA also routinely cautions individuals that state standards may be more stringent and may require oversight or advance approval of all AOCs.

In your letter, you mention the specific concern that individuals could store soils contaminated with hazardous wastes in temporary piles anywhere within an overall area of contamination while installing pipelines or foundation footings and then replace the soil, "all with no RCRA regulatory requirements or governmental oversight." We note that, while movement of soil contaminated with hazardous waste within an area of contamination would not typically trigger RCRA, the AOC concept in no way shields individuals from otherwise applicable cleanup requirements. For example, in many states discovery of contaminated soils triggers reporting requirements under the state cleanup program. In these cases, if a state determined that cleanup was warranted it could require management or removal of contaminated soils, independent of RCRA. We believe that, addressing potential cleanup needs for contaminated soils discovered during normal earthmoving and grading activities using cleanup laws is more appropriate than imposing the RCRA permitting process on these activities.

Thank you for your concern regarding the AOC concept. EPA continues to believe that proper application of this concept will support appropriate remedies and expedite cleanup processes, not encourage avoidance of legitimate cleanup obligations. For additional information, your staff may wish to contact Elizabeth McManus or Hugh Davis, of my staff, at (703) 308-8657 and (703) 308-8633, respectively.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste

Enclosure

Attachment

New York State Department of Environmental Conservation
Division of Solid & Hazardous Materials
50 Wolf Road, Albany, New York 12233 - 7250
Division of Solid & Hazardous Materials
(518) 457-6934 FAX (518) 457-0629

February 14, 1996

Mr. Michael Shapiro
Office of Solid Waste MC5301
U.S. Environmental Protection Agency
401 M St., S.W.
Washington, D.C. 20460

Dear Mr. Shapiro:

We need your clarification of an important issue regarding the CERCLA Area of Contamination (AOC) concept and its applicability to routine excavations where soils containing hazardous waste or exhibiting a hazardous waste characteristic may be encountered.

These routine excavations can occur at construction sites or pipeline trenches where soils are temporarily removed and subsequently redeposited in the same excavated area.

Our specific concern is whether a June 11, 1992 guidance letter from Ms. Sylvia K. Lowrance, Director, Office of Solid Waste (EPA), to Mr. Douglas H. Green (see Enclosure No.1) properly extended the AOC concept to excavations at non-CERCLA sites or other sites without any federal or authorized state oversight. This June 11, 1992 letter is being taken at "face value" as allowing contractors to routinely excavate what may be regulated hazardous waste soil, store it in temporary piles anywhere in the overall area of contamination while installing pipelines or foundation footings, and then replace the soil, all with no RCRA regulatory requirements or governmental oversight.

We question if this June 11, 1992 letter was meant to have

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broadly sanctioned such activities. We need your guidance in this matter.

The AOC concept, as described in such documents as the EPA memorandum of April 17, 1989 signed by Jonathan Z. Cannon (see Enclosure No. 2) and EPA Superfund LDR Guide #5, "Determining When Land Disposal Requirements (LDRs) Are Applicable to CERCLA Response Actions" (see Enclosure No. 3), is used only in CERCLA contexts.

EPA's letter of January 7, 1991 signed by Don R. Clay, Assistant Administrator (see Enclosure No. 4), extended the AOC concept to RCRA Corrective Action sites, but cautioned that "designation of an AOC is a function performed by the regulatory agency."

The EPA June 11, 1992 letter, however, extended the AOC concept to essentially any temporary excavation activities anywhere.

We hereby request that your office reexamine the reasoning behind this EPA June 11, 1992 letter (see Enclosure No. 1) and determine whether it properly broadened the AOC concept to sanction such activities, even at ordinary construction sites.

Thank you for helping us with this important matter. Please call me if you have any questions.

Sincerely,

Norman H. Nosenchuck, P.E.
Director
Division of Solid & Hazardous Materials

Enclosures